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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| M.C.,<br>Petitioner,<br>v.<br>THE SUPERIOR COURT OF SAN FRANCISCO COUNTY,<br>Respondent;<br>SAN FRANCISCO DEPARTMENT OF HUMAN SERVICES,<br>Real Party in Interest. | A123073<br><br>(San Francisco County Super. Ct. No. JD07-3074) |

M.C. (Father) seeks extraordinary review of an order setting a hearing pursuant to Welfare and Institutions Code[1] section 366.26 (.26 hearing). (Cal. Rules of Court, rule 8.452.) We deny the petition on the merits.

## I. BACKGROUND

The San Francisco Department of Human Services (the department) filed a petition pursuant to section 300 on February 22, 2007, on behalf of V.C., who was then 12 months old. According to the petition, V.C.'s mother, C.W. (Mother),[2] had chronic mental health problems, and had been put on a psychiatric hold on or about February 20,

[1] All statutory references are to the Welfare and Institutions Code.

[2] Mother is not a party to this proceeding. We will recite the facts relating to Mother only to the extent they are necessary to understand the issues Father raises.

2007, leaving the child without supervision. The petition also alleged that Mother had failed to protect and supervise V.C., that she had a substance abuse problem for which she was taking methadone, that Mother's rights to another child had been terminated, and that Father also had a substance abuse problem for which he participated in a methadone maintenance program.[3]

The detention report indicated that Mother had been found walking on Haight Street, appearing incoherent, bumping into pedestrians, and stumbling around with V.C. in her arms. Mother had previously been evicted from transitional housing because of multiple violations of house rules and neglect of V.C. Father was in a methadone maintenance program and was not employed. Mother reported that Father had problems with alcohol and was not an appropriate caregiver. V.C. was placed in foster care.

According to a disposition report, Father stated that he was receiving methadone, and was participating in a parenting class. He said he was willing to have a drug assessment, to follow any recommendations, and to test for drugs every week. He and Mother wanted to receive couples counseling. The department recommended, among other things, that Father complete a substance abuse assessment and follow all recommendations from the assessment, be tested for drugs, complete a parent education program and undergo couples counseling, maintain suitable housing, and visit V.C. regularly. The department developed a case plan under which Father would attend relationship counseling with Mother, have a substance abuse evaluation and follow all recommendations, and drug test weekly.

On April 13, 2007, the juvenile court found it had jurisdiction over V.C., found that Father's progress in alleviating the cause necessitating placement had been minimal, and ordered reunification services. The matter was set for a six-month review in October 2007.

A July 2007 progress report indicated Mother and Father had been consistent in visiting V.C., that Father had completed his parenting class, and that he had had two drug

[3] The petition contained other allegations that were later stricken.

tests, one of which had been positive for alcohol and marijuana, and one of which was positive for alcohol and opiates.[4] Both parents had worked to the best of their ability to fulfill their reunification requirements, but Father continued to use alcohol daily.

A status review report prepared for the six-month review hearing recommended that the parents receive six additional months of reunification services. Father was visiting V.C. regularly. He had begun drug testing, and had been referred several times to the Homeless Prenatal Program for a substance abuse assessment, but had not completed the assessment. The social worker who prepared the report had never been around Father when he had not been drinking, and believed he was in late stage alcoholism and consumed alcohol daily. He and Mother had not enrolled in couples counseling, although they had been given a referral.

At the six-month review hearing, the court found that reasonable efforts had been provided or offered to the parents to help them alleviate the problems that had caused the removal of the child, ordered V.C. to remain in foster care, and ordered six more months of reunification services. The 12-month review hearing was scheduled for April 10, 2008.

The department requested an order reducing Father's weekly visits to three hours instead of five hours, due to an incident on a visit on November 27, 2007, when Father and Mother argued and Father behaved aggressively toward the visitation supervisor. A social worker met with Father and Mother three days later. During the meeting, Father was aggressive toward the social worker. He said he had not received a letter containing a referral for substance abuse assessment and drug testing, but refused to take a copy of the letter when the social worker offered it. Mother and Father argued with each other at the meeting. Father had a substance abuse assessment on December 5, 2007, and began random drug tests. Two tests in December 2007 were clean. It appears that the court reduced the length of Father's weekly visits to three hours.

[4] It appeared that one of Father's approved medications was an opiate.

A status review report prepared for the 12-month review hearing indicated that Vivian Harris, the case manager who had carried out Father's drug assessment, had recommended that he participate in drug testing, a peer support group, and an outpatient program. He was scheduled to be tested twice a week at Leaders in Community Alternatives, Inc. (LCA), but had missed 38 tests at LCA since mid-December, although he had been told that a missed test would be considered a "dirty" test. However, as of the middle of March he had been attending group meetings at another facility, Mission Family Council, for three or four weeks, came to the program sober, and had been testing at the program. He had failed to complete one parenting class, but had completed another at a different facility. Although Mother and Father had seen a therapist once for couple's counseling, they had missed subsequent visits. Father had been visiting V.C. regularly. The visits generally went well, although on at least two occasions in January and February 2008, Father and Mother had argued during the visit.

The report also noted that two reports had been made to Adult Protective Services on behalf of Mother, once in July 2007 when Father physically harmed Mother, and once in February 2008, when Mother was "assaulted by her boyfriend," receiving cuts and bruises.

The department recommended that reunification services be terminated and a .26 hearing be set, noting that Mother was not able to care for V.C., that Father had not addressed his substance abuse, and that there had been allegations that he was abusing Mother.

A July 2008 addendum report indicated that Father had not attended his substance abuse treatment program at Mission Family Council since March 2008, and that he had been discharged from the program for excessive absences.

The review hearing was continued three times, and eventually took place on October 20, 2008. The social worker assigned to the case, Khoi Dang, testified that since the addendum report was prepared in July 2008, Father had tested for substances five

times and had missed approximately 40 tests.[5] During that time, he had visited V.C. about 15 times, and had missed about five visits. The parents had begun fighting during the visits, at times in front of V.C., and Father had been "calling the staff names" and telling them not to include certain things in their reports. At a visit on October 7, 2008, Mother's nose was bent and she told the visitation worker that Father had punched her. Mother and Father went outside and continued to fight, pushing each other near an intersection. Describing the visits, Dang said, "when it's good, it's good. When it's not, it's chaotic." The parents had completed intake for couples counseling, but did not complete the counseling, and Father had not continued his substance abuse programs.

Dang testified that Harris, the case manager for the Homeless Prenatal Program who had completed Father's substance abuse assessment, had recommended that Father receive a psychiatric evaluation. When Dang spoke with Harris about her assessment, he found that her focus was on the services Father should receive for his problems with substance abuse. The department did not give Father a referral for a psychiatric evaluation.

The juvenile court rejected Father's contention that he should have been referred for a psychiatric evaluation, noting that neither the petition nor the case plan indicated a need for mental health services. The court also noted that Father had missed many substance tests and had not followed through on his substance abuse treatment, and that more than 18 months had elapsed since V.C. had been detained. The court found by clear and convincing evidence that reasonable efforts had been made to help the parents overcome the problems that led to the dependency, terminated reunification services, and set the matter for a .26 hearing.

## II. DISCUSSION

Father's sole contention is that the juvenile court erred in finding that he had received reasonable services. We reject this contention for two reasons.

[5] Father told Dang that he had been unable to test because his name had been taken off the list for drug testing. Dang spoke with staff at LCA, who told him Father's name was on the list and that his number had been called randomly.

First, the hearing at which the court terminated reunification services took place 20 months after V.C. was detained. As a result, we apply the standards applicable to an 18-month permanency review hearing. In *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501 (*Denny H.*), as here, a 12-month review hearing had been continued several times, and eventually took place more than 18 months after the children there had been removed from parental custody. The Court of Appeal concluded that the 12-month hearing should be treated as an 18-month permanency review hearing. (*Id.* at pp. 1508-1509.)

The court in *Denny H.* went on to reject the father's contention that he had not been provided reasonable services, stating: "At the critical juncture of the 18-month hearing, the authority of the juvenile court to set a section 366.26 hearing is *not* conditioned on a reasonable services finding. In mandatory, unequivocal terms, section 366.22, subdivision (a) states that if the minor is not returned to parental custody at the 18-month review, 'the court *shall* order that a hearing be held pursuant to Section 366.26 . . . ." (*Denny H.*, *supra*, 131 Cal.App.4th at p. 1511.)[6] Even if the court finds reasonable reunification services have not been provided, section 366.22, subdivision (a) does not prohibit it from ordering a .26 hearing. (*Denny H.*, at p. 1511, citing *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1015-1016.)

The juvenile court here acknowledged this law, stating that the case was over the 18-month period and that reunification services could not be extended absent exceptional circumstances. We agree that in the circumstances, the court could set a .26 hearing even in the absence of a finding that reasonable services had been provided during the review period.

In any case, we also reject Father's contention that he did not receive reasonable services. "[W]ith regard to the sufficiency of reunification services, our sole task on

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[6] The court noted that services could be extended beyond the statutory period if there were extraordinary circumstances involving an external factor that prevented the parent from participating in the case plan. (*Denny H.*, *supra*, 131 Cal.App.4th at p. 1510.) No such circumstances exist here.

review is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) In making this determination, we are mindful of the stricture that "[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) However, the agency must make " '[a] good faith effort' to provide reasonable services responding to the unique needs of each family." (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.)

The evidence supports the juvenile court's conclusion here. The only allegation sustained against Father was that he "ha[d] a substance abuse problem for which he need[ed] assessment & possible treatment and [was] currently participating in a methadone maintenance program." The services the department offered—supportive services for substance abuse and drug testing, in addition to relationship counseling and parenting education—were designed to address Father's problems with alcohol and substance abuse. Whether or not a psychiatric assessment might also have been helpful, the juvenile court could conclude that the department offered reasonable services to help Father overcome the problems that had led to V.C.'s detention and the continued dependency.

## III. DISPOSITION

The petition is denied on the merits. (§ 366.26, subd. (*l*)(1)(C); Cal. Rules of Court, rules 8.452, 5.585(b); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b)(3).) The request for a stay of the February 25, 2009, hearing is denied.

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RIVERA, J.

We concur:

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RUVOLO, P.J.

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REARDON, J.

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